

**MONEY LAUNDERING/BANK SECRECY ACT:  
FinCEN Needs To Strengthen Its Efforts To Deter  
And Detect Money Laundering In Casinos**

OIG-03-001

October 1, 2002



**Office of Inspector General**

\*\*\*\*\*

**The Department of the Treasury**

# Contents

---

**Audit Report**..... 3

    Results in Brief..... 3

    Background ..... 7

    Findings and Recommendations ..... 10

        FinCEN Has Not Obtained And Reviewed Adequate Information From Its  
        Regulatory Partners To Ensure Casinos Are Complying With Regulatory  
        Requirements ..... 10

        Recommendations..... 21

        FinCEN’s Enforcement Actions Could Be More Timely And Consistent..... 22

        Recommendations..... 34

        FinCEN Delayed Issuing Final Regulations For Casinos To File Suspicious  
        Activity Reports By Casino (SARCs) ..... 37

        Recommendations..... 45

        FinCEN Needs To Improve Its Review And Analysis Of Casino BSA  
        Information ..... 47

        Recommendations..... 51

## Appendices

Appendix 1: Objectives, Scope, And Methodology ..... 53

Appendix 2: Management Comments ..... 55

Appendix 3: Major Contributors To This Report ..... 63

Appendix 4: Report Distribution..... 64

## Abbreviations

AI	Artificial Intelligence
AML	Anti-Money Laundering
BSA	Bank Secrecy Act
CBRS	Currency Banking Retrieval System
CY	Calendar Year

# Contents

---

CTR	Currency Transaction Report
CTRC	Currency Transaction Report by Casino
DCC	Detroit Computing Center
FBI	Federal Bureau of Investigation
FinCEN	Financial Crimes Enforcement Network
FY	Fiscal Year
GCB	Gaming Control Board
IRS	Internal Revenue Service
MOA	Memorandum of Agreement
NBFI	Non-Bank Financial Institution
SAR	Suspicious Activity Report
SARC	Suspicious Activity Report by Casino
SARS	Suspicious Activity Reporting System

*The Department of the Treasury  
Office of Inspector General*

---

October 1, 2002

James F. Sloan  
Director  
Financial Crimes Enforcement Network

The Financial Crimes Enforcement Network (FinCEN) was established in April 1990. FinCEN's original mission was to provide a government-wide, intelligence and analytical network to support the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes. In May of 1994, FinCEN assumed responsibility for administering the Bank Secrecy Act (BSA). Congress enacted the BSA to help deter, detect, and investigate money-laundering crimes. Casinos with gross annual gaming revenue in excess of \$1 million are subject to the BSA's reporting and record-keeping requirements.

We conducted our review to determine what efforts FinCEN has taken to deter and detect money laundering in casinos. We conducted our fieldwork between July 2001 and March 2002. We visited FinCEN Headquarters; the Internal Revenue Service's (IRS) Headquarters; IRS's Mays Landing, New Jersey, Field Office; the New Jersey Division of Gaming Enforcement; the New Jersey Casino Control Commission; and the Nevada Gaming Control Board (GCB). A more detailed description of our objectives, scope, and methodology is provided as Appendix 1.

## Results in Brief

FinCEN could more effectively administer the BSA to deter and detect money laundering in casinos. FinCEN could improve by:

- working in partnership with the IRS and Nevada's GCB;
- effectively enforcing the BSA;

- 
- subjecting casinos to suspicious reporting requirements; and
  - utilizing its advanced data mining technologies effectively.

Without such improvements, the risk that money laundering could go undetected in casinos is increased.

### **Adequate Information Not Obtained Or Reviewed**

FinCEN became responsible for administering the BSA in May of 1994. However, as of August 2001, despite recent efforts to rebuild its compliance program, FinCEN had not obtained or reviewed adequate information from its regulatory partners (IRS's SB/SE Division and Nevada's GCB) to be able to provide assurance that casinos were complying with the BSA's recording and record keeping requirements. FinCEN officials could not provide assurance about casino compliance because: (1) FinCEN did not obtain adequate information from the IRS about its casino examination program; and (2) FinCEN's Assistant Director, Office of Compliance and Regulatory Enforcement (OCE) was not aware that Nevada's GCB had been sending quarterly reports to an employee in her office. Accordingly, she could not provide us with any information regarding Nevada's casino regulatory program.

### **Enforcement Actions Could Be More Timely And Consistent**

FinCEN did not provide timely and consistent enforcement actions when IRS casino examinations disclosed noncompliance with BSA requirements. Although FinCEN resolved recent referrals in a more timely manner, it took FinCEN more than 3 years to resolve 7 of 28 cases we reviewed. We also noted that, in some cases, the statute of limitations expired on a number of violations. This may have contributed to FinCEN not assessing penalties on these cases. FinCEN officials identified the age of certain IRS casino referrals as one of the reasons they decided to close referrals without assessing civil money penalties.

In addition, FinCEN did not process casino referrals consistently. Historically, FinCEN assessed civil money penalties when IRS examination reports identified BSA violations. However, after a

---

change in enforcement personnel and enforcement philosophy, FinCEN resolved seven casino referrals by issuing warning letters or taking no enforcement action. The seven casino referrals FinCEN closed with warning letters had potential penalty amounts that exceeded \$8 million. FinCEN communicated its new enforcement philosophy to IRS, encouraged IRS to develop procedures for this new philosophy, and tried to get IRS officials to agree with this new philosophy. Based on our interviews with IRS officials, a review of IRS correspondence, and our review of FinCEN's enforcement case files, it appears IRS officials did not agree with several aspects of FinCEN's new enforcement philosophy. However, FinCEN implemented its new enforcement philosophy without first resolving IRS's concerns about how the program should be run. As a result, the IRS may be reluctant to refer casino compliance examination reports to FinCEN for penalty consideration in the future.

#### **SARC Regulations Not Finalized**

FinCEN did not finalize the suspicious activity report by casino (SARC) regulations it originally proposed in the Federal Register during 1998. Although FinCEN has encouraged casinos to file SARCs on a voluntary basis, we found evidence to suggest they have not routinely done so. FinCEN officials indicated they did not finalize the proposed SARC regulations because of the amount of time needed to draft a final rule, evaluate comments received, obtain clearance throughout the Treasury Department, and the need to address more important priorities. Members of the law enforcement community consider suspicious activity reports (SAR) to be a valuable investigative tool. Law enforcement officials have been highly critical of FinCEN's delays in finalizing the proposed SARC regulations. Without SARC requirements, FinCEN and the law enforcement community it supports do not have a critical deterrent in the fight against money laundering.

#### **Improved Analyses Of BSA Reports Needed**

FinCEN utilizes artificial intelligence (AI) software to proactively review and analyze millions of BSA reports. When FinCEN employees identify potential investigative leads, they forward them

---

to appropriate law enforcement officials. However, during a demonstration of FinCEN's AI database, we found the database did not contain about 4 years of currency transaction reports by casino (CTRCs). FinCEN's failure to maintain accurate CTRC data in the database its employees use for pro-active targeting limited FinCEN's ability to identify potential money laundering activity in casinos. For example, we reviewed an investigative case file which involved more than \$16 million of CTRCs. This case clearly would have interested FinCEN's proactive targeting unit. However, FinCEN's AI database did not contain data on more than \$15 million of CTRCs, from May 1997 forward. The subject of the case in question was eventually convicted for participating in a fraudulent multi-million dollar investment scheme. According to the law enforcement agent who worked the case, the subject laundered his victims' proceeds in a casino.

### **Recommendations And Comments**

To more effectively administer casino compliance with the BSA, we recommended FinCEN: take a number of actions to improve the information received from its regulatory partners, clarify enforcement actions when non-compliance occurs, subject casinos to SAR reporting requirements, and improve the analysis of casino BSA information.

FinCEN management generally concurred with all findings and recommendations and has implemented or is in the process of implementing satisfactory corrective actions. This includes the issuance of a final rule requiring SARC reporting that FinCEN issued following our audit. The final rule was issued in September 2002 and will be effective in March 2003. FinCEN, however, does not believe the report acknowledges recent significant improvements made to its BSA enforcement program.

We believe the completion of FinCEN's proposed corrective actions will strengthen the operation of its BSA enforcement program. The complete text of FinCEN's response is provided in Appendix 2.

---

## Background

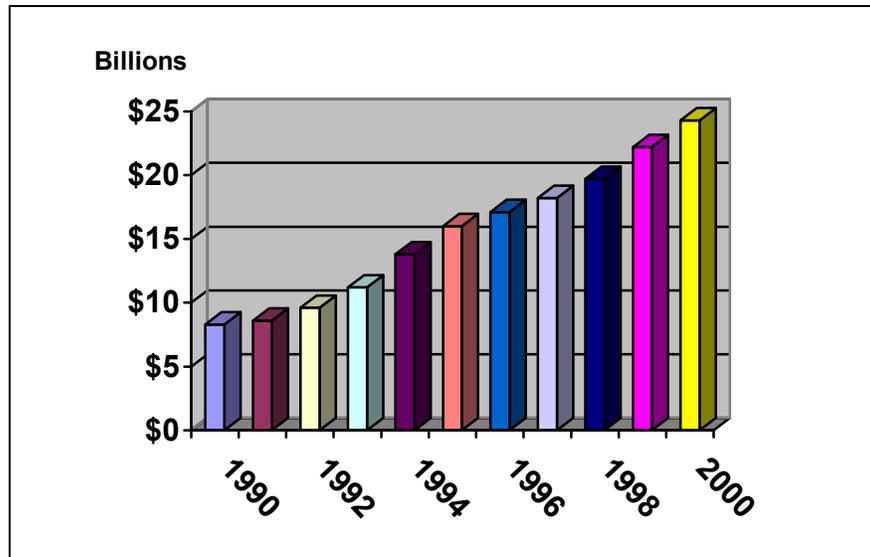
### Bank Secrecy Act

Congress enacted the BSA in 1970 to help deter, detect, and investigate money-laundering crimes. Money laundering is defined as moving illegally obtained funds through financial institutions to make the funds appear unrelated or untraceable to the illegal activities from which they originated. Using the BSA, the Treasury Department requires domestic financial institutions to maintain records and report on certain types of financial transactions.

FinCEN was established in April 1990 by Treasury Order Number 105-08. FinCEN's original mission was to provide a government-wide, intelligence and analytical network to support the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes. In May of 1994, Treasury expanded FinCEN's anti-money laundering role to include responsibility for administering the BSA.

In 1985, the Treasury Department amended the BSA to add casinos with gross annual gaming revenue in excess of \$1 million to the list of entities subject to BSA reporting and record-keeping requirements. Lawmakers considered casinos vulnerable to manipulation by money launderers and tax evaders because of the fast-paced and cash intensive nature of the gaming industry, and because casinos provide their customers with a vast array of financial services. According to the American Gaming Association, casino gross revenue in U.S. markets totaled about \$26 billion for Calendar Year (CY) 2000.

**Figure 1. Growth Of Casino Gambling**



Source: American Gaming Association

The State of Nevada received an exemption from the BSA in May 1985, when Nevada and the Treasury Department signed a memorandum of agreement (MOA). The Treasury Department granted Nevada an exemption based on the condition that the State develop and maintain a casino regulatory system that substantially meets the reporting and record-keeping requirements of the BSA. Nevada's state regulatory system is referred to as Regulation 6A. The terms of the MOA required Nevada to provide the Treasury Department with status reports, on at least a quarterly basis, of all but minor violations of the state regulatory system. These reports were required to include a detailed description of violations committed and the names and identifying information concerning person(s) who committed violations.

Under the BSA, casinos are required to file CTBCs with the Treasury Department. Casinos must prepare a CTBC when one of their patrons conducts a cash transaction that exceeds \$10,000 during a single gaming day. Casinos send their CTBCs to the IRS's Detroit Computing Center (DCC), where they are entered into IRS's Currency Banking Retrieval System (CBRS) database. Casinos file

---

SARCs on a voluntary basis. FinCEN issued proposed SARC regulations in 1998, but never issued final regulations.

FinCEN depends on the following regulatory partners to help it administer the BSA:

- financial institutions subject to BSA information for collection and reporting requirements;
- financial regulatory agencies that supervise such institutions and support FinCEN in administering the BSA;
- IRS's SB/SE Division (formerly, the Examination Division) which examines non-bank financial institutions (NBFI), such as casinos and money services businesses, for compliance with the BSA;
- the law enforcement community, which relies on financial information to identify and prosecute money laundering and other financial crimes; and
- IRS's DCC, which processes more than 13 million BSA reports annually.

In 1970, the Treasury Department delegated to IRS the responsibility for assuring businesses that routinely exchange or handle money, but are not banks (i.e., NBFIs), comply with the BSA's (Title 31) reporting requirements. Examples of NBFIs are money remitters, check cashers, and casinos. IRS's SB/SE Division is responsible for ensuring non-banks comply with BSA financial transaction reporting and record-keeping requirements, as part of IRS's Anti-Money Laundering (AML) Program.

There are three basic aspects to IRS's AML program, as follows:

1. identifying NBFIs subject to BSA requirements;
2. educating NBFIs about their BSA reporting and record-keeping responsibilities; and
3. examining NBFIs to determine if they have complied with BSA reporting and record keeping requirements.

---

When IRS examiners identify casino BSA violations, they refer their examination reports to IRS's Criminal Investigation Division (CID). IRS's CID investigates criminal statute violations. If IRS CID officials do not believe the BSA violations in question warrant a criminal investigation, then IRS refers the report to FinCEN's OCE for civil penalty consideration. FinCEN's OCE assesses civil penalties for BSA violations. IRS does not have penalty authority.

IRS also has oversight authority over Nevada's state regulatory system. IRS conducts periodic oversight reviews of Regulation 6A and the Nevada State Regulatory System. FinCEN is responsible for ensuring Nevada's Regulation 6A mirrors (substantially meets) the reporting and record-keeping requirements of the BSA.

FinCEN and IRS both have specific duties they must carry out to ensure domestic businesses comply with BSA requirements. IRS is responsible for conducting casino examinations, and referring material violations to FinCEN for civil penalty consideration. FinCEN is responsible for issuing BSA regulations, processing IRS casino referrals and enforcing the BSA. To ensure the BSA casino program is effective in deterring and detecting money laundering in casinos, FinCEN and IRS must work together.

## **Findings and Recommendations**

### **Finding 1      FinCEN Has Not Obtained And Reviewed Adequate Information From Its Regulatory Partners To Ensure Casinos Are Complying With Regulatory Requirements**

FinCEN became responsible for administering the BSA in May of 1994. However as of August 2001, despite recent efforts to rebuild its compliance program, FinCEN had not obtained or reviewed adequate information from its regulatory partners (IRS's SB/SE Division and Nevada's GCB) to ensure casinos were complying with the BSA's reporting and record-keeping requirements. FinCEN officials could not provide assurance about casino compliance because: (1) FinCEN did not obtain adequate information from the IRS about its casino examination program; and (2) FinCEN's Assistant Director, OCE was unaware that

---

Nevada's GCB had been sending quarterly reports to an employee in her office. Accordingly, she could not provide us with any information regarding Nevada's casino regulatory program.

FinCEN officials indicated they planned to improve their administration of the casino BSA program, as they received additional resources. FinCEN officials indicated they did not place a higher priority on administering the casino BSA program because they:

- devoted their limited resources to other priorities;
- had limited authority over the IRS and could not force the IRS to be more active in its compliance efforts;
- believed casino compliance was improving; and
- believed money laundering was not a pervasive problem in the casino industry based on their review of IRS casino referrals and voluntary disclosures made by members of the casino industry.

FinCEN is responsible for administering the BSA and for leading the Treasury Department's efforts to combat money laundering. In order to be effective in this leadership role, FinCEN must work with its regulatory partners to develop a program that provides reasonable assurance that casinos are complying with BSA requirements. Otherwise, non-compliance could increase the risk that money laundering will go undetected in casinos.

### **FinCEN's Role In Administering The BSA**

FinCEN's Strategic Plan for Fiscal Years (FY) 2000-2005 identified administering the BSA as one of FinCEN's strategic objectives. Specifically, the plan indicated FinCEN was responsible for effectively administering the BSA to support the prevention, detection and prosecution of money laundering and other financial crimes.

The Strategic Plan also indicated FinCEN works in partnership with and relies heavily on its regulatory partners (IRS's SB/SE Division and Nevada's GCB) to examine casinos for regulatory compliance. However, the Assistant Director, OCE, indicated she did not receive information concerning either the IRS's or Nevada's casino

---

compliance efforts. Specifically, the Assistant Director, OCE could not provide us with information regarding:

1. the number of casinos the IRS and GCB had/had not examined; and
2. IRS's casino selection rationale.

Since FinCEN did not obtain and/ or review basic program information from its regulatory partners, we question whether FinCEN was in a position to:

- make informed decisions about the casino program, such as, determine when new regulations (SARC) were needed; and
- effectively serve the needs of the law enforcement community.

For example, the Assistant Director, OCE, concluded she had received fewer IRS casino examination referrals because the casino industry's BSA compliance rate had improved. However, IRS officials indicated they were referring fewer casino examinations to FinCEN because they were frustrated with FinCEN's recent decision to close casino referrals with little or no enforcement action.

FinCEN's Assistant Director, OCE, expressed concerns about the adequacy of IRS's casino examination program. Specifically, the Assistant Director indicated IRS's National Office (Headquarters) did not provide adequate national oversight over its AML program. Additionally, the Assistant Director, OCE, indicated that, unlike the bank regulating agencies that also report to FinCEN, it did not appear IRS employed any sort of national risk-based strategy for determining which casinos to examine. The Assistant Director, OCE, was concerned about IRS's casino selection rationale because 32 of the 34 casino referrals IRS sent FinCEN between 1996 and 2001 resulted from examinations conducted in only two states. Additionally, the Assistant Director indicated Treasury's Inspector General for Tax Administration (TIGTA) issued an audit report in December 2000 that concluded IRS did not have adequate oversight over its AML program.

---

Regarding Nevada's casino regulatory program, FinCEN officials had previously expressed concern that Nevada's SARC regulations allowed casinos to use their judgment when determining whether to file a SARC. FinCEN officials were concerned that Nevada casinos were not filing enough SARCs. FinCEN officials expressed their concerns about Nevada's SARC regulations during discussions with IRS officials from the Southwest District. FinCEN officials provided comments when IRS conducted a recent oversight review of Regulation 6A and Nevada's State Regulatory System. During discussions with IRS officials, FinCEN asked IRS to evaluate and report on the SARC issue in the scope of its Regulation 6A review. IRS issued its oversight report in September 2000. The report was highly complimentary of the GCB's oversight program, but did not include a review of the SARC issues FinCEN asked IRS officials to consider. In addition, FinCEN officials were unaware that IRS had finalized and issued its oversight report.

Since FinCEN was unable to provide us with information about IRS's and Nevada's compliance programs, we met with IRS and Nevada officials responsible for casino compliance. We also requested and reviewed pertinent information regarding their casino compliance programs. As illustrated below, we found significant differences existed between the BSA and Nevada's Regulation 6A. We also noted differences in the way IRS and Nevada operated their casino compliance programs.

**Table 1. Differences Between The BSA And Regulation 6A**

<b>BSA Regulations</b>	<b>Nevada Regulation 6A)</b>
<b>Applicability</b>	
Casinos with gross gaming revenues over \$1 million	Casinos with gross revenues of \$10 million or more and \$2 million in table games statistical win
<b>Currency Reporting</b>	
Required to aggregate and report multiple transactions within the casino that exceed \$10,000 in 24 hour period	Required to aggregate multiple transactions within designated areas within same gaming day.
<b>Prohibited Transactions</b>	
N/A	Exchanging cash for cash, cash for a casino check or wire transfer (> \$3,000)
<b>Suspicious Activity Reporting Requirements</b>	
Not Required	Required

**Table 2. Significant Differences Between IRS's And Nevada's Casino Compliance Programs**

<b>IRS Small Business/Self Employed Division</b>	<b>Nevada Gaming Control Board (GCB)</b>
<b>Casino Examination Selection</b>	
Local area offices decide which casinos to examine.	GCB performs a formal risk assessment & plans audits accordingly.
<b>Audit Resources</b>	
Casino reviews take between 9 & 15 months.	Budgets about 200 hours for Reg.6A reviews.
<b>Audit Cycles</b>	
Audit cycle is unknown: appears many BSA casinos have never been examined.	3-year exam. cycle for all Reg. 6A casinos & annual interim reviews with selective covert reviews.
<b>Management Information Systems/Reports</b>	
TIGTA report concluded IRS's MIS for AML program was weak.	Submits quarterly reports to FinCEN to summarize compliance and enforcement activity.
<b>Audit Scope &amp; Depth</b>	
Examination scope covers 1-2 year periods. IRS tests 100% of documented transactions	Scope covers 3-year periods and includes limited transaction testing (2 days per quarter).
<b>Penalty Assessment Process</b>	
Refers casino exams to FinCEN for penalty consideration. FinCEN's average referral processing time exceeds 2 years.	Refers complaints to the State Attorney General's Office. Complaints are generally resolved in less than 6 months.
<b>Authority Over Auditees</b>	
IRS is precluded from reviewing casino revenue or general tax information during BSA compliance examinations.	Auditors can request any record they deem necessary. Casinos are licensed by the State, which has the power to revoke gaming licenses.
<b>External Reviews</b>	
TIGTA audit report (Dec. 2000) concluded IRS's AML program needed improvements.	IRS oversight review (Sept. 2000) concluded GCB had a significant presence at casinos.

---

## **IRS's Oversight Of BSA Casinos**

We met with IRS officials responsible for running the AML program. They substantiated FinCEN's concerns regarding IRS's national oversight of its casino AML program. Because of limited resources, budget cuts, reorganizations, and the growth rates of the various industries IRS is responsible for examining, IRS officials acknowledged they had problems keeping up with their workload. Regarding the casino compliance program, IRS officials told us casinos encompassed only a small portion of their NBF BSA program responsibilities.

To follow up on FinCEN's concerns, we asked IRS officials to explain how they ran their casino AML program. IRS officials explained their National office determines the number of full-time equivalents (staff resources) to be allocated to the casino program. Each area office operates autonomously and determines how to best utilize resources. IRS officials indicated each area office could provide details about its casino compliance efforts, which varied at each local IRS jurisdiction. Since we were not auditing the IRS, IRS officials asked us to limit our contact to Headquarters officials and an IRS agent from Mays Landing, New Jersey.

To obtain a perspective on IRS's national coverage of the casino industry, we asked IRS officials to provide:

1. a current list, by name, of all casinos in the U.S. subject to BSA requirements (current casino universe); and
2. a list of the names of all the casinos IRS examined for BSA compliance between October 1, 1999, and June 30, 2001.

Despite repeated requests during the course of our fieldwork, IRS could provide us with only summary information. Instead of giving us a list of the names of casinos that made up the current casino universe, IRS summary reports indicated the current casino universe as of March 31, 2001, consisted of 513 casinos. In addition, the summary data showed IRS conducted 53 casino examinations between October 1, 1999, and March 31, 2001.

---

However, IRS could not tell us the specific names of the 53 casinos examined during this time frame.

In January 2002, we met with IRS's acting AML Program Manager in Philadelphia, PA. This official replaced the IRS officials we interviewed at IRS Headquarters when we began our audit. After we completed our fieldwork, IRS's new AML Program Manager provided us with more detailed information about the number of casinos IRS examined between October 1, 1999 and March 31, 2001. She provided us with a list of 82 casinos IRS examined during this time frame. This information indicated IRS had conducted 29 more examinations than had been previously reported. The additional examinations were all conducted at tribal casinos.

We determined the 82 casinos IRS examined between October 1, 1999, and March 31, 2001, represented about 16 percent of IRS's current casino universe (513 casinos). At that rate, it seems unlikely the IRS will be able to examine enough casinos to provide reasonable assurance the casino industry is complying with the BSA. Based on the limited information we obtained from FinCEN and IRS about the number of casinos IRS has examined, we are concerned there are numerous BSA casinos IRS has never examined. Nevada's GCB and the bank-regulating agencies that report to FinCEN have 3 and 4-year examination cycles, respectively. In comparison, it appears the IRS may be falling short in its efforts to ensure casinos comply with the BSA.

IRS officials indicated they were not currently devoting significant resources to casino examinations. In addition to staff resource concerns, IRS officials told us their examiners were frustrated with the way FinCEN had resolved recent IRS casino referrals. Specifically, they indicated FinCEN closed out several IRS casino referrals without assessing any civil money penalties when IRS examination reports disclosed BSA violations. As a result of these problems, IRS officials indicated their working relationship with FinCEN had deteriorated.

When we met with IRS's new AML Program Manager in January 2002, she indicated the IRS was currently reorganizing its AML

---

Program. Additionally, she told us she had met with FinCEN's Assistant Director, OCE, and agreed that IRS needed to change the way it operates. She indicated IRS's main goal was to ensure the entities IRS examines comply with regulations.

### **IRS Casino Referrals Resulted From Examinations Conducted In Only A Few States**

IRS referred 34 casino examinations to FinCEN between January 1, 1996, and June 26, 2001. We reviewed the 34 referrals and noted that, even though IRS was responsible for conducting casino examinations throughout the United States, 32 of the 34 referrals (or 94 percent) conducted during this period resulted from examinations conducted in Mississippi and Louisiana.

IRS referred only one New Jersey casino examination report to FinCEN between 1996 and 2001. However, an IRS Agent from Mays Landing, New Jersey, told us he was in the process of completing the second round of examinations for all 12 New Jersey casinos. After completing his first round of casino examinations in New Jersey, the IRS Agent referred all 12 examination reports to FinCEN. FinCEN penalized the 12 New Jersey casinos a total of \$2.2 million for BSA violations identified in IRS referrals. The Mays Landing IRS Agent, as well as officials from New Jersey's Division of Gaming Enforcement, attributed improved New Jersey casino compliance to FinCEN's enforcement actions (casino penalties). After completing the first round of New Jersey examinations, the IRS Agent developed a risk assessment based on casino business volume, compliance history, and the number of criminal cases worked at each casino by IRS's Criminal Investigation Division. The Agent acknowledged New Jersey casinos clearly had the most IRS examination presence in the nation.

### **Nevada Gaming Control Board Oversight Of Nevada Casinos**

Nevada casinos are exempt from BSA reporting requirements pursuant to an MOA with the Department of the Treasury. Under this agreement, Nevada casinos are subject to their own currency reporting and record-keeping requirements (Regulation 6A), which

---

are regulated by Nevada's GCB. Although Nevada's MOA requires Nevada to maintain a regulatory system which is substantially similar to BSA requirements, there seems to be distinct regulatory and operating differences between the two systems (see Tables 1 and 2 above).

We met with GCB officials during our review. We learned Nevada had been forwarding quarterly reports to FinCEN. These quarterly reports summarized Nevada's compliance and enforcement efforts. However, the reports were not forwarded to the Assistant Director, OCE, for her review and consideration.

Although Nevada's Regulation 6A casino audits were not nearly as comprehensive as IRS's casino examinations, Nevada's primary strength was its significant presence in Nevada casinos. Specifically, Nevada's GCB developed a comprehensive casino risk assessment. The GCB also used a variety of review techniques, which required some presence in every Regulation 6A casino on an annual basis. GCB auditors performed a mix of comprehensive Regulation 6A audits, interim audits, and covert reviews to ensure they visited every Regulation 6A casino at least once a year.

### **Nevada Casinos Not Filing Enough SARCs**

Despite the GCB's extensive oversight presence in Nevada casinos, and state regulations that require Nevada casinos to report suspicious activity, it does not appear Nevada casinos have taken state SARC requirements very seriously.

We requested and reviewed SARC data from Nevada's GCB and New Jersey's Division of Gaming Enforcement (DGE). We compared Nevada SARC data with the number of SARCs filed by casinos in Atlantic City, New Jersey. New Jersey also implemented a mandatory state SARC requirement that became effective on October 16, 2000.

Our analysis showed that more than 100 Nevada casinos filed a total of 415 SARCs since 1997, for an average of less than one SARC per casino per year. In contrast, the 12 casinos located in Atlantic City, New Jersey, filed more than 200 SARCs between

---

January and March of 2001, which, when annualized, equals an average of more than 60 SARCs per casino per year.

Considering there are more than 100 Nevada casinos subject to Regulation 6A requirements, and Nevada casinos generated about twice as much gross annual gaming revenue as New Jersey casinos during Calendar Year (CY) 2000 (see Table 3 below), it appears Nevada casinos may not be complying with Nevada's SARC regulations.

**Table 3: Casino Gross Gaming Revenue for CY 2000**

Casino Market	Number of Casinos	Gross Gaming Revenue (Billions)
New Jersey	12	\$4.3
Nevada	> 100	\$8.2

Source: American Gaming Association Web-site

We asked Nevada GCB officials if they evaluated the number of SARCs filed by Nevada casinos and whether they used any audit procedures to determine whether casinos were complying with Nevada's SARC regulations. Nevada GCB officials indicated they generally respected a casino's judgment on whether a SARC was required. They only reviewed SARCs that had been filed to ensure the forms contained all required information and were filed in accordance with state requirements.

### **Summary**

In summary, FinCEN needs to be more diligent in its efforts to administer the casino BSA program to provide reasonable assurance the casino industry is complying with the BSA. This includes FinCEN obtaining and reviewing information from its regulatory partners. Additionally, FinCEN should communicate with its regulatory partners to ensure they address weaknesses and concerns identified by FinCEN. FinCEN should also consider working with the IRS and Nevada's GCB to ensure each agency

---

clearly understands its casino regulatory roles and responsibilities. Otherwise, there is a risk that money laundering will go undetected in casinos.

**Recommendations:**

We recommend the Director, FinCEN:

1. Consider documenting FinCEN's and IRS's BSA responsibilities in a Memorandum of Agreement. The agreement should be a collaborative effort between FinCEN and the IRS. The agreement should ensure each agency's limited resources are utilized to provide effective administration of the BSA. The agreement should provide for a periodic review of IRS's compliance efforts to determine whether IRS's examination presence is adequate to provide reasonable assurance the casino industry is complying with the BSA. IRS should provide FinCEN with management reports on its casino examination selection rationale, and its casino compliance efforts.

Management Comment. Concur. FinCEN management agreed with the intent of the recommendation, and beginning in the first quarter of FY 2003, FinCEN will assure it receives periodic reports outlining IRS's AML Program examination efforts during the previous period, including a summary of the results of its examination efforts. FinCEN began efforts to achieve more collaboration with the IRS when the Assistant Director for the Office of Compliance and Regulatory Enforcement was hired in December 1998. FinCEN management indicated FinCEN would continue to collaborate with the IRS to ensure reasonable assurance that the casino industry complies with the BSA. FinCEN prepared a report for Congress in April 2002 in accordance with 357 of the U.S.A. Patriot Act. The Patriot Act Report reflects IRS's and FinCEN's current priorities and responsibilities. FinCEN indicated the effort that went into developing its Patriot Act Report helped to correct a number of areas identified in our audit report.

OIG Comment. Management has proposed and completed alternative actions that meet the intent of the recommendation.

---

Accordingly, we consider this recommendation to have a management decision with an estimated date of December 31, 2002, for full implementation.

2. Ensure summary reports provided by Nevada's GCB are forwarded to appropriate FinCEN personnel. Periodically, review Nevada GCB reports to determine whether the GCB's oversight is adequate to provide reasonable assurance that Nevada casinos are complying with Regulation 6A requirements.

Management Comment. Concur. During the audit, FinCEN asked the Nevada GCB to transmit these reports directly to FinCEN Enforcement. These reports are now incorporated into FinCEN's procedures and are handled the same way FinCEN handles similar reports submitted by other agencies that refer cases to FinCEN.

OIG Comment. We consider this recommendation to have a management decision. Corrective action was completed during the audit that meets the intent of our recommendation.

## Finding 2

### **FinCEN's Enforcement Actions Could Be More Timely And Consistent**

FinCEN did not provide timely and consistent enforcement actions when IRS examinations disclosed noncompliance with BSA requirements. Specifically, we reviewed 28 IRS casino examination referrals FinCEN resolved after January 1999, and noted:

- FinCEN did not process casino referrals according to its management oversight and timeliness procedures. As a result, 7 of 28 casino referrals (25 percent) took more than 3 years to resolve, and only 1 of the 7 referrals was assessed a civil money penalty. In some instances, it appears statute of limitation (statute) concerns influenced FinCEN's resolution decisions.
- FinCEN did not process casino referrals consistently. As a result, FinCEN resolved 7 casino referrals by issuing warning

---

letters or taking no enforcement action. Historically, FinCEN assessed civil money penalties when IRS examination reports identified BSA violations. The 7 casino referrals in question had a potential penalty amount that exceeded \$8 million.

- FinCEN communicated its new enforcement philosophy to IRS, encouraged IRS to develop procedures for this new philosophy, and tried to get IRS officials to agree with this new philosophy. Based on our interviews with IRS officials, a review of IRS correspondence, and our review of FinCEN's enforcement case files, it appears IRS officials did not agree with several aspects of FinCEN's new enforcement philosophy. However, FinCEN implemented its new enforcement philosophy without first resolving IRS's concerns about how the program should be run. As a result, the IRS may be reluctant to refer casino compliance examination reports to FinCEN for penalty consideration in the future.

FinCEN's Assistant Director, OCE, attributed her decision not to implement management and oversight procedures to insufficient staff. She attributed her decisions not to pursue penalties in recent resolution decisions to a change in enforcement personnel and a change in FinCEN's enforcement philosophy. FinCEN's new enforcement philosophy focuses on fostering casino compliance through education and industry outreach, and applying civil penalties in more egregious cases. The Assistant Director, OCE, indicated she believed casino compliance was improving because casinos had come forth to self-disclose violations to FinCEN. In addition, the Assistant Director, OCE, repeatedly communicated FinCEN's new enforcement philosophy and civil penalty rationale to the IRS. However, she indicated she was unable to effectively build a relationship with the IRS because of the IRS's reluctance to change the way it does business and because the IRS did not have an effective National Title 31 Anti Money Laundering Program.

FinCEN needs to develop a more effective enforcement program that includes working with the IRS, its regulatory partner, to ensure casinos comply with the BSA. FinCEN cannot rely on members of the casino industry to self-disclose violations and purchase expensive internal control programs without testing those systems.

Improving FinCEN's enforcement program would also send a message to the casino industry regarding the importance the Treasury Department places on BSA compliance.

**Delays Appear To Have Influenced FinCEN's Enforcement Actions**

FinCEN considered the age of certain IRS casino referrals as a mitigating factor in its decisions to close referrals without assessing civil money penalties. In addition, FinCEN could not pursue civil money penalties for BSA violations in some cases (Table 4) because the statute of limitations (6 years) had begun to expire. FinCEN documented its rationale for not assessing civil money penalties in its enforcement objectives and in its case files.

In April and July 1999, FinCEN's casino analyst forwarded a total of nine completed casino case file reviews to FinCEN management. The analyst recommended FinCEN pursue penalties in all nine cases, which involved a total of 311 BSA violations. The analyst indicated the cases were time-sensitive, and it was critical that FinCEN move forward on the cases because of statute concerns. The analyst also indicated the United States Attorney in Mississippi was aware of FinCEN's past enforcement efforts and encouraged FinCEN to continue with its BSA enforcement. FinCEN assessed a civil money penalty against only 1 of the 9 casinos for \$75,000. In addition, FinCEN management did not resolve 5 of the other 8 cases before the statute had started to expire.

**Table 4. Casino Cases Resolved After Statute Began to Expire**

Casino	Date Forwarded to Management	Date Statute Begins to Expire	Date Resolved
1	04/23/99	11/23/99	05/18/00
2	07/30/99	07/08/00	07/24/00
3	04/23/99	12/31/99	02/28/01
4	04/23/99	01/03/00	08/30/01
5	04/23/99	01/08/01	08/30/01

Source: OCE Case Files

---

We could not determine if FinCEN would have assessed penalties if management had responded more timely to these cases. However, FinCEN indicated that, although age was a factor, they would not have assessed penalties in the above cases for numerous other reasons.

### **FinCEN's Average Case Processing Time Exceeded Two Years**

GAO reviewed FinCEN's administration of BSA civil case referrals in 1998. GAO issued an audit report which cited FinCEN for taking too long to process its inventory of civil case referrals<sup>1</sup>. GAO recommended FinCEN set timeliness goals with increased management attention to correct this problem. The GAO report concluded that lengthy processing time could negatively affect the public's perception of the government's efforts to enforce the BSA. The GAO report also found the government's ability to enforce the BSA was compromised because FinCEN was unable to pursue violations disclosed in compliance examinations because the statute of limitations had expired.

In response to the GAO report, FinCEN's Director issued revised procedures designed to address management oversight and timeliness concerns. These procedures became effective in July 1998. The procedures required FinCEN analysts and managers to meet critical timelines to expedite case processing. However, due to insufficient staff resources, FinCEN officials responsible for processing civil penalty referrals did not follow these procedures.

The Treasury Office of Inspector General (OIG) also reviewed FinCEN's administration of BSA civil case referrals<sup>2</sup>. Treasury OIG's audit report, issued in 1999, indicated FinCEN had issued new management and oversight procedures; identified immediate and future initiatives to build a solid enforcement process; and hired a new Assistant Director for the OCE. The report indicated

---

<sup>1</sup> *Money Laundering FinCEN Needs to Better Manage Bank Secrecy Act Civil Penalty Cases*, GAO/GGD-98-108, June 1998.

<sup>2</sup> *FinCEN Office of Compliance And Regulatory Enforcement*, OIG-00-114, November 5, 1999.

---

FinCEN's new Assistant Director had made significant improvements in reducing the inventory backlog and had processed referrals more timely. The Treasury OIG report concluded that, to ensure continued progress, FinCEN needed to implement the Assistant Director's planned initiatives.

We analyzed 28 referrals FinCEN closed between 1999 and 2001. FinCEN's average case processing time for these cases exceeded 2 years, and was nearly identical for referrals that were resolved with penalties and cases that were resolved without penalties. FinCEN's June 1998 management oversight and timeliness procedures required FinCEN to determine whether case referrals warranted civil penalty consideration within 90 days. FinCEN resolved only 2 of 20 cases that were not assessed penalties within 1 year. It took FinCEN more than 3 years to resolve 6 of the 20 cases that were not penalized.

**Table 5: FinCEN's Processing Time For Casino Referrals That Did Not Result In Civil Money Penalties**

Casino	Date Received	Date Closed	Case Processing Time (Years)
1	01/14/00	05/18/00	.34
2	09/28/99	07/25/00	.83
3	08/07/00	08/30/01	1.06
4	08/07/00	08/30/01	1.06
5	06/07/00	08/24/01	1.21
6	06/24/98	12/14/99	1.47
7	01/14/00	08/30/01	1.63
8	02/05/98	10/22/99	1.71
9	09/17/98	07/24/00	1.85
10	10/30/98	10/03/00	1.93
11	12/09/97	12/21/99	2.03
12	06/24/98	07/24/00	2.08
13	06/05/97	12/17/99	2.53
14	06/05/97	12/17/99	2.53
15	02/05/98	02/22/01	3.05
16	07/10/98	08/30/01	3.14
17	01/13/97	05/18/00	3.35
18	10/07/97	02/28/01	3.39
19	02/27/97	08/30/01	4.51
20	06/05/97	08/30/01	4.24

Source: OCE Case Files.

**Table 6: FinCEN's Processing Time For Casino Referrals Assessed Civil Money Penalties**

Casino	Date Received	Date Closed	Case Processing Time (Years)
1	06/03/97	04/23/99	1.89
2	10/07/97	10/01/99	1.98
3	10/07/97	10/01/99	1.98
4	10/30/98	12/20/00	2.14
5	04/30/97	08/03/99	2.26
6	10/07/97	03/06/00	2.41
7	12/04/96	10/01/99	2.83
8	05/30/96	08/09/99	3.19

FinCEN resolved three cases on August 30, 2001. It took FinCEN more than 3 years to process these three cases. Our review of the case files indicated FinCEN analysts completed their analysis and forwarded these cases for management review in late 1999 and early 2000. Although, FinCEN analysts recommended pursuing civil penalties, the *age of the violations and statute concerns* were mitigating factors in FinCEN management’s decisions not to pursue civil penalties.

In another case that was resolved in July 2000, we noted the case resolution was beyond the date the statute began to expire. We also noted that the FinCEN analyst recommended pursuing civil money penalties a year earlier.

**Enforcement Actions Not Processed Consistently**

FinCEN did not consistently process IRS casino examination referrals between 1996 and 2001. FinCEN assessed only one casino civil money penalty for \$75,000 after it implemented its new enforcement philosophy. Before implementing the new enforcement philosophy, FinCEN routinely assessed civil money penalties when IRS examination reports identified violations.

**Table 7. Casino Referrals Assessed Civil Money Penalties Before FinCEN Implemented Its New Enforcement Philosophy**

Number of Casinos	Total Penalties Assessed
12 New Jersey Casinos	\$2.2 million
7 Mississippi Casinos	\$1 million
Total	<u>\$3.2 million</u>

The Assistant Executive Director for Regulatory Policy (FinCEN’s former enforcement official) processed the casino referrals in the table above. The Assistant Director, OCE (FinCEN’s new enforcement official), indicated she assumed casino case processing responsibility, and implemented FinCEN’s new

enforcement philosophy in late 1999. FinCEN's Assistant Director acknowledged she inherited a number of casino referrals that were initially processed under the old enforcement philosophy, and were subsequently resolved according to the new enforcement philosophy.

FinCEN officials attributed resolution inconsistencies to a change in enforcement personnel and philosophy. However, since FinCEN applied this new enforcement philosophy to casino referrals that were already in its pipeline and initially processed under its former enforcement philosophy, IRS field examiners and FinCEN's own analysts expected FinCEN to assess penalties against casinos that violated the BSA.

We reviewed 14 casino cases FinCEN processed during its enforcement transition period. FinCEN analysts recommended pursuing civil money penalties in each of these cases, but FinCEN assessed penalties only in the seven cases that were resolved before the enforcement transition took place. As a result, FinCEN's inconsistent case resolution frustrated the IRS and sent an inconsistent enforcement message to the casino industry.

**Table 8. Casino Referrals Resolved Before FinCEN's Change In Enforcement Personnel/Philosophy**

	<b>Date Received</b>	<b>Date Closed</b>	<b>No. of Violations</b>	<b>Penalty Assessed</b>	<b>Maximum Penalty Per BSA Regulations</b>
1	05/30/96	08/09/99	25	\$115,000	\$625,000
2	12/04/96	10/01/99	44	227,500	1,100,000
3	04/30/97	08/03/99	23	145,000	575,000
4	06/03/97	04/23/99	28	101,000	700,000
5	10/07/97	10/01/99	28	160,500	700,000
6	10/07/97	10/01/99	31	150,000	775,000
7	10/07/97	03/06/00	24	160,000	600,000
Subtotal			203	<b>\$1,059,000</b>	<b>\$5,075,000</b>

**Table 9. Casino Referrals Resolved After FinCEN's Change  
In Enforcement Personnel/Philosophy**

	<b>Date Received</b>	<b>Date Closed</b>	<b>No. of Violations</b>	<b>Penalty Assessed</b>	<b>Maximum Penalty Per BSA Regulations</b>
8	06/24/98	07/24/00	21	\$0	\$525,000
9	01/13/97	05/18/00	2	0	50,000
10	10/07/97	02/28/01	114	0	2,850,000
11	02/27/97	08/30/01	35	0	875,000
12	06/05/97	08/30/01	73	0	1,825,000
13	07/10/98	08/30/01	37	0	925,000
14	08/07/00	08/30/01	45	0	1,125,000
Subtotal			327	\$0	\$8,175,000

**Casinos 5 And 10 Above**

The IRS referred these casino cases to FinCEN on the same day (October 7, 1997). At the time, the two casinos were both owned by the same parent company. FinCEN's former enforcement official processed case number 5 in October 1999, which resulted in a \$160,500 penalty. FinCEN's new enforcement official processed case number 10 in February 2001, which resulted in a warning letter. The case for casino number 10 involved significantly more BSA violations and higher potential penalty amounts than casino number 5. Additionally, by the time FinCEN resolved case number 10, the casino had been sold to another corporation. Also, FinCEN could not pursue some of the BSA violations from case number 10 because they had already passed the statute of limitations' expiration date.

**Casinos 3 And 11 Above**

The IRS referred these casino cases in April and February 1997, respectively. The two casinos were both owned by the same parent company. FinCEN's former enforcement official processed case number 3 in August 1999, which resulted in a \$145,000 penalty. FinCEN's new enforcement official processed case

---

number 11 about 2 years later in August 2001. FinCEN resolved this case with a warning letter. The case for casino number 11 involved more BSA violations and higher potential penalty amounts than casino number 3. Electronic mail correspondence between FinCEN officials acknowledged the two cases should have been worked together and both should have been assessed penalties. However, FinCEN's correspondence to IRS examiners indicated FinCEN decided not to pursue penalties in case number 11 because there was not enough evidence to prove willfulness.

### **FinCEN's Rationale For Casino Case Processing**

FinCEN's former enforcement official assessed civil money penalties for 19 of the 20 cases discussed above (12 New Jersey and 7 Mississippi casino referrals). According to this FinCEN official, IRS examination referrals warranted civil penalty consideration when they showed the BSA standard of willfulness was met. In his opinion, to meet the standard, IRS casino examinations had to show casinos had knowledge of: (1) BSA requirements; (2) specific reportable transactions had taken place; and (3) reportable transactions were not reported.

This FinCEN official indicated he processed casino referrals until well into 1999 because of his expertise and knowledge about the casino industry. He told us that, since casinos became subject to the BSA in 1985, only two IRS districts had committed resources to casino examinations: San Juan and Atlantic City. Additionally, he told us IRS's examination presence was not keeping up with the growth of the casino industry throughout the United States.

FinCEN became concerned when media reports indicated money laundering was going on in casinos, which had recently opened in Mississippi and Louisiana (the Gulf Region). IRS was not conducting any examinations in the Gulf Region at the time. FinCEN encouraged IRS to start conducting casino examinations in the Gulf Region. However, according to FinCEN's former enforcement official, IRS was reluctant. FinCEN's former enforcement official guaranteed IRS officials he would penalize Gulf Region casinos if IRS examination reports identified willful BSA violations.

---

FinCEN's Assistant Director, OCE, was not surprised with our observations regarding FinCEN's inconsistent case resolution. She acknowledged the inconsistencies in FinCEN's case files, and said they could be attributed to FinCEN's new enforcement philosophy. FinCEN's new enforcement philosophy emphasizes fostering casino compliance through education and outreach, and assessing civil penalties in egregious cases. Additionally, the Assistant Director, OCE, indicated she did not believe IRS's casino examinations were adequate to prove casinos willfully violated the BSA. In her opinion, IRS casino examination reports did not identify the root cause of noncompliance. As a result, based on advice from FinCEN's enforcement counsel, she did not consider them adequate to meet the BSA's willfulness standard.

#### **IRS Did Not Agree With FinCEN's New Enforcement Philosophy**

FinCEN's Assistant Director, OCE, began communicating FinCEN's new enforcement philosophy to IRS during 1999. The Assistant Director, OCE, sent IRS several pieces of correspondence, which outlined FinCEN's new enforcement philosophy and enforcement objectives. FinCEN also provided us with correspondence the IRS sent FinCEN in response to the new enforcement philosophy. In their correspondence, IRS officials indicated they did not agree with several aspects of FinCEN's proposed enforcement program. However, it appears FinCEN implemented its new enforcement program without first resolving IRS's concerns about how the program should operate.

IRS officials indicated they were frustrated with FinCEN's recent casino resolution decisions because FinCEN did not resolve referrals timely, and/or FinCEN's case resolutions were inconsistent with IRS's past experiences with FinCEN. IRS officials indicated they referred casino examinations to FinCEN based on a relationship that had evolved over a number of years. To discuss these issues, IRS officials indicated they arranged a conference call with FinCEN. Specifically, IRS arranged the conference call because examiners from IRS's New Orleans office (Gulf Region) requested a meeting to discuss their frustration with FinCEN's resolution of specific referrals. IRS officials said FinCEN's Assistant Director, OCE, used

---

this conference call as an opportunity to discuss FinCEN's new enforcement philosophy.

FinCEN's Assistant Director, OCE, indicated she was not satisfied with the way IRS planned and conducted its examinations. She indicated IRS's examinations took entirely too long to complete and were too focused on transaction testing without following through to develop root causes for noncompliance. FinCEN encouraged the IRS to modify its examination procedures to provide assurance that casinos developed and implemented adequate BSA internal control programs. She also encouraged IRS to conduct limited transaction testing and reduce the amount of time it takes IRS to examine a casino.

FinCEN and the IRS have different views on how to conduct BSA casino examinations. Specifically, FinCEN officials indicated:

- BSA referrals (banks as well as NBFIs) should be processed similarly, labeling this an "umbrella approach;" and
- casino examinations should be conducted using a "top down" approach, with emphasis on compliance programs and limited transaction testing.

However, IRS officials contend:

- casinos are part of the entertainment industry, and cannot be treated like other financial institutions; and
- casino examinations need to be conducted utilizing a "bottom up" approach with emphasis on transaction testing.

Additionally, an IRS official indicated FinCEN's recent practice of citing a casino's overall compliance rate (number of CTRC reports not filed / number of CTRC reports filed), as a mitigating factor in its decisions not to pursue civil penalties is wrong. The IRS official indicated there is no excuse when casinos fail to file required CTRCs. Casino internal control procedures require several casino personnel to witness and approve reportable transactions. IRS officials said FinCEN's practice of factoring the number of CTRC reports filed by a casino in its enforcement determinations

---

gives casino management too much “wobble room” to selectively enforce BSA reporting requirements. IRS officials indicated their strained relationship with FinCEN has contributed to a reduction in the number of casino referrals IRS sends FinCEN.

### **Summary**

FinCEN could more effectively enforce BSA requirements at casinos. Even though the Assistant Director, OCE, started working at FinCEN in December 1998, she did not develop her enforcement objectives into revised referral procedures for the IRS. Furthermore, since FinCEN applied its new enforcement philosophy to several casino referrals that were already in FinCEN’s pipeline, and were initially processed under the old enforcement philosophy, FinCEN analysts, including IRS detailees, continued to devote significant staff resources to analyzing IRS casino referrals with the expectation of pursuing civil penalties.

We believe FinCEN’s new enforcement philosophy may not sufficiently recognize the benefits and deterrent value associated with assessing civil money penalties. As a result of FinCEN’s recent resolution decisions, FinCEN did not collect civil money penalties and may have damaged its relationship with the IRS. FinCEN’s unilateral decision to change its enforcement philosophy without considering the IRS’s concerns could affect FinCEN’s ability to effectively administer the BSA program in the future, even if FinCEN improves its enforcement program.

### **Recommendations:**

We recommend the Director, FinCEN:

1. Ensure OCE management oversight and timeliness procedures are followed.

Management Comment. Concur. FinCEN indicated OCE management oversight and timeliness procedures have been followed for all cases received after 1999. To address concerns outlined in a previous GAO audit report, FinCEN’s annual performance report includes a performance measure

---

that addresses the average processing time for civil penalty cases. The average processing time decreased significantly from the FY 1997 baseline of 4.23 years to 1.8 years, as reported in FY 2001.

OIG Comment. We consider the recommendation to have a management decision. The management oversight and timeliness procedures were not followed for all the referrals closed during our review (between 1999 and 2001). However, the procedures were followed for the referrals received after 1999. Since these referrals represent the most recent referrals, we believe no additional action is needed to address the intent of this recommendation.

2. Work with IRS officials to reach an agreement on an acceptable enforcement strategy to ensure Treasury's BSA compliance objectives are met.

Management Comment. Concur. FinCEN indicated it has been working with the IRS for the past 2 years to implement an acceptable and legally supportable enforcement strategy. FinCEN officials indicated this effort has been an evolving process, in light of IRS's reorganization and renewed emphasis on its BSA responsibilities. The report FinCEN prepared for Congress in accordance with 357 of the U.S.A. Patriot Act outlined IRS's and FinCEN's current priorities. The effort that went into developing this audit report along with IRS's establishment of a National AML coordinator has resolved issues related to the enforcement strategy.

OIG Comment. We consider the recommendation to have a management decision. We believe the actions that FinCEN has completed during the course of the audit will address the intent of the recommendation. Notwithstanding FinCEN's collaboration with the IRS, we are concerned that IRS correspondence we reviewed during the course of our audit indicated IRS officials strongly disagreed with several aspects of FinCEN's new enforcement strategy. Accordingly, we encourage FinCEN to continue to work with the IRS to ensure casinos comply with BSA requirements.

- 
3. Develop and implement updated civil case processing procedures which are consistent with FinCEN's enforcement program objectives. At a minimum, these procedures should provide IRS examiners and FinCEN analysts with objective standards so they can determine whether referrals warrant civil penalties. Specifically, these procedures should define what is needed to meet the BSA's willfulness standard.

Management Comment. Concur. FinCEN developed, updated, and implemented civil case processing procedures beginning in 1999 and has been working with the IRS and FinCEN analysts since that time. FinCEN's enforcement group became fully staffed in late 2001. Each new employee has been fully trained in processing procedures and received a comprehensive procedural manual with numerous sample documents. FinCEN also plans to utilize IRS's annual Title 31 Training Conference, held the week of August 12<sup>th</sup> to further address procedures for developing referrals for enforcement matters or civil monetary penalty consideration. FinCEN plans to provide instruction on how to conduct a Title 31 examination, further outline its enforcement examination philosophy related to Title 31, and highlight the scope of IRS's new responsibilities, as outlined in the Patriot Act.

OIG Comment. We consider the recommendation to have a management decision. We believe the actions that FinCEN has completed meet the intent of our recommendation. In addition to participating in IRS's Training Conference, we encourage FinCEN to provide the IRS with written guidance which clearly articulates FinCEN's interpretation of the willfulness standard, since it was often interpreted differently by the two agencies.

4. Monitor the OCE to ensure it meets its short-term goals and priorities, with regards to processing casino civil case file referrals.

---

Management Comment. Concur. OCE provided quarterly reports to FinCEN management prior to 1999. Beginning in 1999, the Assistant Director, OCE, revamped the quarterly reporting procedures. This included adding statistics and information on enforcement and other regulatory matters. Beginning in January 2000, these interim reports were prepared and distributed to FinCEN management, OCE staff, and Enforcement Council on a monthly basis. In addition, FinCEN's annual performance report includes a performance measure that addresses the average processing time for civil penalty cases. The average processing time has significantly decreased from the FY 1997 baseline of 4.23 years to 1.8 years, as reported in FY 2001.

OIG Comment. We consider the recommendation to have a management decision. We believe the actions that FinCEN has completed meet the intent of our recommendation. However, FinCEN Senior management should ensure the OCE has the resources to meet its goals. In that regard, we reviewed numerous quarterly reports during the course of our audit that repeatedly indicated the OCE had no employees and was not processing any cases.

### **Finding 3**

#### **FinCEN Delayed Issuing Final Regulations For Casinos To File SARCs**

FinCEN has not finalized proposed casino SARC regulations it originally issued in the Federal Register in May of 1998. Although FinCEN has encouraged casinos to voluntarily report suspicious activity, we found evidence to suggest they have not routinely done so. FinCEN officials indicated they did not finalize their proposed casino SARC regulations because of the amount of time needed to draft a final rule, evaluate comments received, obtain clearance throughout the Treasury Department, and comply with higher priorities. Therefore, when the casino industry expressed concern about several areas of the proposed regulations, FinCEN officials decided to revisit these issues at a later date. The law enforcement community indicated suspicious activity reports are a

---

valuable and necessary investigative tool. Law enforcement officials have been highly critical of FinCEN's delays in issuing finalized SARC regulations. Additionally, SARC regulations have been repeatedly highlighted as a priority in the National Money Laundering Strategy, an annual report issued jointly by the Treasury and Justice Departments. Without SARC requirements, FinCEN and the law enforcement community it serves do not have a critical deterrent in the fight against money laundering.

FinCEN maintains the Suspicious Activity Reporting System (SARS), a database that contains information on SARs. Under the BSA, financial institutions are required to report suspicious transactions. The SARS was created in April 1996 by FinCEN and the five Federal financial supervisory agencies (Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration). SARS was designed to be the centerpiece of a new approach to using the BSA to fight financial crime.

FinCEN is designated as the single filing point for suspicious activity reports, and is responsible for distributing SAR information within the government. FinCEN is also responsible for analyzing SAR information and providing resulting intelligence to investigators, regulators, and the banking industry.

On May 18, 1998, FinCEN proposed an amendment to the BSA that required casinos and card clubs to file SARs. Specifically, the proposed Federal regulations, which banks were already subject to, required casinos and card clubs to report suspicious transactions involving at least \$3,000 in funds or other assets. Additionally, the proposed amendments required casinos and card clubs to establish procedures designed to detect occurrences or patterns of suspicious transactions. Casinos were required to modify their internal control systems and BSA compliance programs to ensure they could reasonably deter and detect suspicious activity.

FinCEN estimated casinos and card clubs would file approximately 3,000 SARs as a result of the proposed SARC regulations. FinCEN was working towards a goal of building a comprehensive system

---

for reporting suspicious transactions; a core component of the counter-money laundering programs of the Department of the Treasury. By mandating casinos to file SARCs, FinCEN would be one step closer to achieving this goal.

### **FinCEN Did Not Finalize Federal Regulations**

FinCEN's proposed casino SARC regulations appeared in the May 1998 *Federal Register*. They were also highlighted as a priority in the 1999, 2000, and 2001 National Money Laundering Strategies. However, FinCEN did not finalize its proposed SARC regulations. Although, FinCEN has encouraged casinos to voluntarily file SARCs, casinos had only filed 1,169 voluntary SARCs between late 1997 and April 2001. Accordingly, casinos have not filed as many SARCs as FinCEN had originally estimated (3,000 per year).

### **New Jersey Implemented SARC Regulations For Atlantic City Casinos**

The State of New Jersey's Division of Gaming Enforcement (DGE) adopted its own SARC filing regulations for Atlantic City casinos. New Jersey's SARC regulations became effective on October 16, 2000. An official from New Jersey's DGE indicated the State of New Jersey developed its own SARC regulations, because FinCEN had not finalized its proposed SARC regulations. New Jersey SARC regulations mirrored the Federal SARC proposal with two exceptions: the dollar threshold for New Jersey's SARC requirement was \$5,000 (instead of \$3,000); and the State eliminated the Federal proposal's standard which required casinos to file SARCs if they "had reason to know" something suspicious was going on. In other words, the State left the decision whether or not to file a SARC up to the casino's judgment.

We reviewed the number of SARCs Atlantic City casinos filed both before and after New Jersey's SARC regulations went into effect. Atlantic City casinos filed significantly more SARCs after the regulation went into effect. Specifically, New Jersey DGE officials indicated Atlantic City casinos filed 217 SARCs between January and March 2001 (a period of 3 months). FinCEN provided us with

---

data that indicated Atlantic City casinos filed only 182 SARCs between October 1999 and March 2001 (a period of 18 months that includes the 3-month period mentioned above). In response to a questionnaire we sent Atlantic City casinos, many casinos indicated they developed and implemented new control procedures to ensure they complied with New Jersey's new SARC regulations. Some casinos indicated they do not forward SARC reports to FinCEN, as the state regulation does not require them to do so. This explains the discrepancy between FinCEN's records and the New Jersey DGE's records for the number of SARCs filed by Atlantic City casinos.

New Jersey's SARC regulations have clearly impacted the number of SARCs filed by Atlantic City casinos. Unfortunately, many Atlantic City casinos do not routinely forward their SARC reports to FinCEN. As a result, this information is not available to the law enforcement community that relies on FinCEN to be the single filing point for SARs.

### **Comments On Proposed Regulations**

In addition to receiving written comments to its proposed SARC regulations, FinCEN held four public meetings throughout the U.S. during 1998 to allow industry officials to express their views/concerns about the proposed regulations. Comments FinCEN received from interested parties indicated the casino industry generally opposed the proposed Federal SARC regulations. Specifically, interested parties were concerned that:

- casinos would be subject to a \$3,000 reporting threshold, which was lower than the \$5,000 reporting threshold financial institutions were subject to; and
- FinCEN had proposed a SARC standard that was more burdensome than the SARC standard Nevada casinos were required to follow. FinCEN's proposed SARC regulation required casinos to file SARs if they "know, suspect, or have reason to suspect" that suspicious activity had taken place. Casinos were concerned the Federal government would second guess or question their judgment as to whether and under what circumstances casinos should file SARCs.

---

FinCEN officials intended to evaluate industry feedback and finalize their proposed regulations. However, because of other priorities, FinCEN delayed evaluating the proposed regulations until it could free up necessary resources. After evaluating the comments it received, FinCEN decided to reissue the proposed regulations to clarify points raised by interested parties. FinCEN officials indicated they submitted the proposed renote to the Department of Treasury. The proposed rule underwent the clearance process at the Department of Treasury between September 2000 and November 2001. FinCEN attributed the lengthy clearance process to the sensitivity of the regulations and the change in administrations. A FinCEN official indicated it was subsequently decided to also highlight the fact that the proposed SARC rule would apply to Nevada casinos and encourage the Nevada casino industry to also submit comments. In March 2002, more than 3 years after FinCEN first issued its proposed casino SARC regulations, FinCEN reissued the regulations and requested written comments by May 2002. FinCEN officials indicated they expect to issue final SARC regulations as detailed in the 2001 National Money Laundering Strategy.

### **SARCs Are A Valuable And Necessary Investigative Tool**

Under the BSA, traditional financial institutions are required to file SARs. According to the law enforcement community and various FinCEN publications, SARs have been an extremely valuable resource in FinCEN's efforts to deter and detect money laundering. One FinCEN official felt so strongly about the need for SARC regulations that he identified FinCEN's delays in issuing the regulations as the biggest vulnerability in combating money laundering in casinos. Specifically, this official said that, SARs by their nature are "red flags" that indicate something is not right. A SAR can be the catalyst that gets law enforcement to initiate an investigation. As a result of investigative inquiries, FinCEN can end up linking reports that already reside in its database which show a clear picture of criminal activity.

Many Federal agencies have found SAR information so valuable that they have formed investigative task forces to review and

---

analyze SAR filings for the purpose of proactively developing investigative leads. An Assistant United States Attorney, who has been credited with initiating several SAR task forces, told us it was an embarrassment to the Federal government that these regulations have not been finalized.

### **Suspicious Activities Reported At Casinos**

Even though FinCEN delayed finalizing its proposed SARC regulations, it has issued publications to provide the casino industry with guidance on what constitutes suspicious activity. FinCEN published an industry guide in July 1998, which outlined over 40 different examples of suspicious activity in casinos. FinCEN issued this guide to alert casino personnel how someone might use a casino to launder money. FinCEN intended this guide to compliment its proposed SARC regulations. FinCEN also published a SAR Bulletin in August 2000 that outlined patterns of actual suspicious activities that had taken place in casinos. FinCEN identified the suspicious activities after reviewing SARCs that casinos had voluntarily filed with the Treasury Department.

As reported in FinCEN's August 2000 SAR Bulletin, FinCEN received more than 40 SARCs that revealed a pattern of suspicious activities that took place in casinos. The suspicious activities involved customers using casinos as conduits to transfer significant amounts of money. Typically, after minimal or no gaming activity, patrons cashed out or transferred money they had initially deposited with the casino. This gave the appearance that the patron won the money while gambling at the casino.

FinCEN's SAR Bulletin identified variations on the minimal gaming scenario. This usually involved a customer who made an initial deposit by wire transfer or cashier's check, then the customer:

- subsequently wired the funds to an account outside the casino;
- stored the funds for a period of time in a casino-supplied safety deposit box, then removed the funds in the presence of a casino employee; or

- 
- withdrew funds that had been held by the casino in the form of a safekeeping deposit.

In several instances, customers were observed transferring chips to other individuals to cash out. Customers were also observed redeeming chips for a series of casino checks that totaled significantly more than the amount of their initial deposit (with no apparent winnings to account for the excess amount). FinCEN's SAR Bulletin indicated casino patrons cashed out approximately \$4.6 million in wire transfer deposits and \$820,000 in cashier's check deposits using one of the above methodologies.

### **Examples of Successful Investigations Involving SARs**

FinCEN publishes semi-annual SAR Activity Reviews that identify trends, tips, and issues related to suspicious activity. FinCEN's SAR Activity Reviews represent a continuing collaboration among the nation's financial institutions, Federal law enforcement, and regulatory agencies. They also provide meaningful information about the preparation, use, and utility of SARs.

FinCEN's SAR Activity Reviews have highlighted a number of successful investigations in which SARs and other BSA information played an important role in identifying and prosecuting criminal financial activity. Several examples highlighted in recent SAR Activity Reviews follow.

- Loomis Fargo & Co. in Charlotte, North Carolina, reported a \$17 million theft. An armored-car employee was reported missing the following day, and became the primary suspect. Two days after the theft, associates of the primary suspect began making large cash deposits in several banks. A teller at one of the banks filed a SAR report after one of the associates asked how much money could be deposited before a bank was required to file a form with the Federal government. When the same associate went to another bank with \$200,000 in cash, the bank refused her request for a bank check and also filed a SAR form. As the Federal Bureau of Investigation (FBI) in Charlotte began looking into the suspect's associates, the SAR filings provided a crucial

---

paper trail for investigators to follow. In this case, SAR filings helped investigators follow the money, ultimately leading to the arrest of seven accomplices who were charged with sharing in \$13.7 million stolen by the armored-car employee. In addition, investigators used SARs, along with traditional investigative techniques, to piece together the clues, which led them to discover their suspect was in Mexico.

- A SAR filing by a credit union in Rapid City, South Dakota, was instrumental in uncovering a massive scheme by individuals to embezzle approximately \$2.7 million from a state college. Four Federal investigative agencies were involved with the investigation, which resulted in a 125-count indictment of seven individuals charged with money laundering, structuring, conspiracy, obstruction of justice, and tax evasion. The SAR filing indicated the defendants were structuring currency deposits in amounts under \$10,000.
- The U.S. Customs Service initiated an investigation in the Washington, D.C., area after a Virginia-based bank reported suspicious currency activity on a suspected money launderer. The information indicated possible structuring of financial transactions. The suspect had no visible means of support, yet more than \$4 million had been deposited and withdrawn from his account over a 1-year period. A subsequent investigation revealed that several defendants were engaged in Customs fraud. Based upon SARs filed by the bank, six people were ultimately indicted, arrested, and convicted on money laundering charges.
- A multi-agency money laundering/marijuana trafficking investigation was initiated after a bank in Tennessee filed a SAR. The SAR disclosed that an individual had deposited large amounts of U.S. currency into three bank accounts. The deposits ranged from \$5,000 to \$25,000, and consisted mostly of one hundred dollar bills. Approximately \$1.2 million was deposited into these accounts during a

---

1-year period. Seven defendants were indicted on multiple counts of money laundering and marijuana trafficking.

### **Summary**

Since FinCEN did not finalize its proposed SARC regulations, casinos are not required to file SARCs. Even though FinCEN encourages casinos to voluntarily file SARCs, we found evidence to suggest many do not forward their SARCs to the Treasury Department. New Jersey state gaming authorities became frustrated waiting for FinCEN to implement finalized SARC regulations. As a result, New Jersey implemented its own state-mandated SARC regulations. However, since many New Jersey casinos do not voluntarily forward their SARC information to FinCEN, this information is not available to FinCEN's law-enforcement customers.

FinCEN is designated as the single filing point for SARs, and is responsible for distributing SAR information within the government. FinCEN is also responsible for analyzing SAR information and providing the resulting intelligence to investigators, regulators, and the banking industry. Therefore, FinCEN's SARS database will not contain all relevant SAR filings, as intended.

Unless FinCEN places more emphasis on finalizing SARC regulations, it will not have an effective deterrent in place to identify and prosecute money-laundering activity.

### **Recommendations:**

We recommend the Director, FinCEN:

1. Place a priority on finalizing the proposed casino SARC regulations that FinCEN recently reissued.

Management Comment. Concur. As the OIG report indicates, on March 29, 2002, FinCEN published for additional comment, a rule that would extend suspicious activity reporting to the casino and card club industries. The comment period ended on May 28, 2002, and FinCEN

---

received a total of 14 comments. After considering these comments, FinCEN staff drafted a final SARC rule, which was sent to the Treasury Department for clearance. (OIG Note: The final rule was issued in September 2002 and will be effective in March 2003.)

OIG Comment. We consider the recommendation to have a management decision with an estimated completion date in FY 2003.

2. Have FinCEN determine the circumstances under which FinCEN could obtain all SARCs filed by New Jersey casinos so it can populate its SARS database with all relevant SAR data and make this information available for law enforcement use.

Management Comment. Concur. By September 30, 2002, FinCEN will send a written request to the New Jersey Division of Gaming Enforcement to determine whether and under what circumstances suspicious information reported to New Jersey under rules promulgated by that State could be shared and disseminated by FinCEN. This request will relate only to suspicious reports filed by New Jersey casinos before the Federal rule becomes effective. Once the Federal casino SAR rules become effective in 2003, SARC information reported by casinos and card clubs located throughout the U.S. will be made available to law enforcement to the same extent as other Bank Secrecy Act data. The planned completion date is December 2003.

OIG Comment. We consider the recommendation to have a management decision with an estimated completion date of December 2003.

---

## Finding 4

### **FinCEN Needs To Improve Its Review And Analysis Of Casino BSA Information**

FinCEN utilizes state-of-the-art technology, employs in-house analysts, and mines and analyzes countless types of BSA data to uncover potential criminal relationships. FinCEN forwards information about potential money laundering schemes and other financial crimes to law enforcement. However, during a demonstration of FinCEN's artificial intelligence (AI) database, we found the AI database did not contain more than 4 years of CTRC data. FinCEN uses its AI database to pro-actively identify potential money laundering cases.<sup>3</sup>

FinCEN officials told us they decided not to load CTCRCs into their AI database because of resource constraints and data integrity issues. Additionally, FinCEN officials indicated their pro-active targeting efforts were not industry-specific and they relied primarily on a review of SARs, not CTCRCs, when conducting pro-active targeting.

In order to effectively analyze BSA data, FinCEN should obtain and review information from all available sources. Since casinos are not required to file SARs, a proactive review and analysis of CTCRCs would become even more critical. FinCEN's reliance on SARs to initiate its targeting efforts would not be effective in identifying money laundering in casinos. Therefore, FinCEN should place more emphasis on proactively reviewing casino CTCRCs.

---

<sup>3</sup> FinCEN officials felt this finding was misleading, and wanted us to qualify it by indicating we only tested one case file when we determined the AI system did not contain more than four years of CTCRC data. While we did only test one case file, we found this problem was not isolated to the one case we tested. We received our AI system demonstration on August 29, 2001. At that time, the case we reviewed showed the most current CTCRC data in the AI system was dated May 1997. We asked FinCEN officials if the May 1997 data was the most current CTCRC data the AI database contained as of August 29, 2001 (the date of our demonstration). FinCEN officials provided us with a written response that indicated some 1998 and 1999 CTCRC data had been loaded into the AI system as of November 6, 2001, but they could not verify whether this information had been loaded into the AI system on the day we received our demonstration. Therefore, despite the fact that we only tested one case file, FinCEN's response to our inquiry about how timely CTCRC data had been entered into the AI system clearly demonstrates that this problem was not limited to the one case file we reviewed.

---

### **Problems With The Reliability Of BSA Data**

FinCEN officials indicated they had integrity problems with their data entry process. They told us FinCEN used to load BSA data into its analytical systems using magnetic tapes forwarded by the U.S. Customs Service's Data Center in Newington, VA. Recent data management audits indicated magnetic tapes forwarded by Customs contained media errors. Additionally, FinCEN had no mechanism in place to confirm data on the magnetic tapes matched source information from Customs' or the IRS's databases. To correct these problems, FinCEN has established a process to download data directly from IRS's DCC. FinCEN officials indicated they were going to institute controls to better monitor the data they receive. Such controls will include FinCEN periodically reconciling information loaded into its analytical databases with information maintained on IRS's DCC database.

Regarding historical BSA information, FinCEN officials indicated they are in the process of refreshing all data with downloads from IRS's DCC to ensure historical information is accurate and complete. To date, FinCEN officials indicated they have downloaded and reconciled all historical SARC data. FinCEN's priority is to reconcile historical SAR data first, then Currency Transaction Report (CTR) information, and, finally, CTRC records. FinCEN officials indicated they did not anticipate CTRC data for 1999 and prior to be reconciled until spring or summer of 2002.

### **Casino BSA Filings Were Not A Priority**

When explaining why casino BSA data was not a priority, FinCEN officials indicated casino SARCs represented less than 1 percent of all suspicious activity reported to FinCEN annually. In addition, they indicated casino CTRCs represented about 3 percent of all currency transaction data FinCEN receives each year.

We believe FinCEN's rationale for not considering casino BSA data to be a priority may not be appropriate. Specifically, as explained earlier, casinos are not required to file SARs, which would explain the relatively low percentage of casino SARCs compared with industries required to file SARs. Further, even though CTRCs only

---

represent about 3 percent of all currency transaction data FinCEN receives, we believe their proactive review is essential because: (1) CTRCs are the only required BSA filing, specific to casinos; and (2) CTRCs may provide more investigative value than CTRs.

Specifically, unlike CTRs, which are comprised mostly of routine business filings, CTRCs document large cash transactions conducted by individuals in casinos. As a result, we believe CTRCs are more likely to be of value to law enforcement. Consequently, as discussed below, FinCEN's pro-active targeting may not disclose potential money laundering in casinos.

### **FinCEN Needs To Improve Its Pro-Active Targeting Efforts**

Despite the fact that FinCEN can use several databases to ensure information it provides to law enforcement is complete and accurate, we are concerned FinCEN's current focus of initiating proactive reviews based on SAR activity may not identify potential financial crimes in casinos. As illustrated below, we reviewed an investigative case file FinCEN provided to one of its law enforcement customers, pursuant to a request from a Federal agent. The information FinCEN provided on this case allowed the investigator to facilitate the prosecution of a large-scale real estate investment scheme. Even though the information was in IRS's Currency Banking Retrieval System (CBRS) database, FinCEN's AI database did not contain this information. Therefore, the case was not discovered proactively.

We selected a sample of investigative case files when we began our audit. These cases resulted from investigative requests FinCEN received from law enforcement officials (reactive case support) and cases FinCEN developed pro-actively, in-house. One of the reactive case files we selected involved a subject who had about \$16 million worth of CTRCs filed against him. FinCEN compiled information on this subject by querying IRS's CBRS database. The subject in this case had visited the same casino virtually every day over a period of 2-3 years. A Federal agent asked FinCEN to provide BSA information about the subject during 1999. The Federal agent received information that alleged this subject was operating a fraudulent real estate investment scheme. We were

---

curious why FinCEN hadn't identified this subject during its pro-active targeting, considering the large number of CTRCs with high dollar amounts filed against the subject.

During a demonstration of FinCEN's AI system (in August of 2001), we asked the FinCEN official who was querying the system to search for this subject. FinCEN's AI system only showed about \$900,000 of CTRCs had been filed against the subject. The date of the last entry in FinCEN's AI database for this subject was May 1997. When we asked the FinCEN official why the rest of the CTRC data was not in the AI system, he indicated FinCEN was backlogged in loading BSA data into the AI system. Since the AI system was missing about 4 years of CTRC data, and no SARCs had been filed in this particular case, FinCEN employees did not pick up on this case during their pro-active targeting efforts. Additionally, the FinCEN official who demonstrated the AI system indicated that \$900,000 of CTRCs filed against one person would have been enough to get him interested in initiating a pro-active review.

We contacted the Federal agent who submitted the original data request to FinCEN about the subject in question. The agent indicated the subject and several accomplices had been successfully prosecuted for operating a fraudulent investment scheme which robbed victims of about \$12 million. In addition, the Federal agent indicated the subject used a casino to launder a significant amount of his victims' proceeds. Specifically, the Federal agent indicated the casino in question allowed the subject to negotiate victims' certified checks, even though the subject was not the payee listed on the checks. The Federal agent indicated the casino conducted several questionable financial transactions on behalf of the subject, as he was one of the casino's biggest customers.

Since the AI system contained incomplete data, we asked FinCEN officials if that wouldn't lead to inaccurate analysis, considering the system would not capture all relevant filings for a particular period. They indicated the "disconnect" would not impact FinCEN's ability to pro-actively target casinos. They told us that any target FinCEN identified through the AI system would be fully researched through

---

other systems to get an accurate count of CTRC filings. Our concern is, the valuable BSA data that identified the subject in the example above already resided in the CBRS database. However, since the casino in question never filed a SARC, and FinCEN's AI system did not contain accurate CTRC data, FinCEN's pro-active review team would not have been able to develop a complete and accurate profile of the subject in this case.

**Recommendations:**

We recommend the Director, FinCEN:

1. Develop and implement procedures to ensure FinCEN's analytical databases contain current and historical BSA data.

Management Comment. Concur. FinCEN has improved the process by which it obtains CTRC data by obtaining electronic data downloads directly from IRS's DCC. In addition, FinCEN plans to refresh all CTRC records by the first quarter of FY 2003, and has taken steps to improve the timeliness and accuracy of data transmissions. FinCEN is confident its new procedures will ensure analyses are conducted on a complete set of records. Planned completion date is December 2002.

OIG Comment. We consider the recommendation to have a management decision with the completion of FinCEN's planned actions scheduled for December 2002.

2. Pro-actively review casino specific BSA data to identify potential money laundering and other financial crimes.

Management Comment. Concur with qualifications. As addressed in the previous management response, FinCEN continues to utilize casino specific BSA data to identify potential money laundering and other financial crimes. FinCEN agrees that, until the requirement for mandatory Casino SAR reports is fully implemented, there may be opportunities to make greater use of Casino Currency Transaction Reports. FinCEN's ability to fully exploit these

---

opportunities is currently constrained by available resources, including manpower and technology. FinCEN anticipates an increase in manpower and the operational use of new targeting software by the second quarter of FY 2003. However, FinCEN expects the requirements for mandatory Casino SAR filing to be promulgated during this period. The increase in Casino SAR filings may supplant the need to exploit Casino CTR filings. The planned completion date is January 2003.

OIG Comment. We consider the recommendation to have a management decision with an estimated completion date of January 2003.

\* \* \* \* \*

We would like to extend our appreciation to FinCEN for the cooperation and courtesies extended to our staff during the review. If you have any questions, please contact me at (617) 223-8640, or a member of your staff may contact Dennis Deely, Audit Manager, at (856) 968-4907 x248. Major contributors to this report are listed in Appendix 4.

/s/  
Donald P. Benson  
Regional Inspector General for Audit

The objective of this audit was to determine what actions FinCEN has taken to deter and detect money laundering in casinos. Our audit objectives focused on whether FinCEN effectively administered the BSA. Specifically we reviewed FinCEN's efforts to deter and detect money laundering to include: (1) BSA compliance; (2) BSA enforcement (3) BSA regulations; and (4) FinCEN's collection and analysis of BSA casino filings to support law enforcement.

To accomplish our objective we met with officials and reviewed pertinent records at FinCEN Headquarters; IRS Headquarters; IRS's Mays Landing, NJ, Field Office; U.S. General Accounting Office Headquarters; an Assistant U.S. Attorney in Newark, NJ; Nevada's GCB; and state and local law enforcement officials. We also visited casinos in Atlantic City, NJ, and Las Vegas, Nevada.

We reviewed (1) FinCEN's administration of the BSA and its working relationship with IRS and Nevada; (2) FinCEN's enforcement procedures and enforcement actions FinCEN took on IRS casino examinations forwarded for civil penalty consideration; (3) FinCEN's efforts to issue Federal regulations requiring casinos to file SARs; and (4) FinCEN's reactive and proactive data analysis to support Federal, state and local law enforcement.

We met with officials and requested and reviewed records from FinCEN and its casino regulatory partners (IRS's SB/SE Division and Nevada's GCB) to understand their roles in ensuring casinos comply with BSA requirements. We toured casinos in Atlantic City, NJ, and Las Vegas, Nevada. We met with casino officials to gain a perspective on their compliance programs. We met with officials from New Jersey's Division of Gaming Enforcement and Casino Control Commission to learn about New Jersey gaming requirements and the SARC regulation New Jersey enacted in October 2000. We met with officials from Nevada's GCB to learn about how they run their casino regulatory program.

We reviewed FinCEN's BSA enforcement framework including its: (1) enforcement policies and procedures; (2) working relationship

with the IRS; and (3) methodology for processing casino referrals. We reviewed records and met with pertinent officials concerning FinCEN's decisions regarding proposed casino suspicious activity reporting regulations. We sent questionnaires to Atlantic City casino managers to determine whether state SARC regulations affected the number of SARCs they filed, compared to the number they previously filed voluntarily. We reviewed a sample of FinCEN's investigative case files for proactive and reactive support of Federal and state law enforcement. We attended a demonstration of FinCEN's artificial intelligence database. We also met with and sent questionnaires to members of the law enforcement community to determine if they were satisfied with FinCEN's law enforcement support.

Our audit work was performed from June 2001 to March 2002. We conducted our audit in accordance with generally accepted government auditing standards.

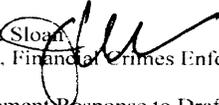
Appendix 2  
Management Comments



DEPARTMENT OF THE TREASURY  
FINANCIAL CRIMES ENFORCEMENT NETWORK

AUG 15 2002

**MEMORANDUM FOR DONALD P. BENSON  
REGIONAL INSPECTOR GENERAL FOR AUDIT**

**FROM:** James P. Sloan   
Director, Financial Crimes Enforcement Network

**SUBJECT:** Management Response to Draft Audit - Efforts to Deter and Detect Money Laundering in Casinos

This memorandum represents management's response to the subject draft report dated July 12, 2002. I understand that this response will be incorporated into the final report, which will be issued in due course. FinCEN generally agrees with the recommendations in the audit report to improve its administration of the Bank Secrecy Act (BSA) as it applies to casinos. However, we do not feel that the report adequately represents the actions taken over the past five years. The additional information provided below is intended to provide a more accurate representation of the actions taken over the last five years to improve the administration of the BSA.

FinCEN's administration of the Bank Secrecy Act (BSA), including its regulatory enforcement function, covers over 200,000 financial institutions, including 160,000 money services businesses, 24,000 depository institutions and 600 casinos. FinCEN revised its approach to the administration of the BSA in 1999 by implementing a risk-based approach to the examination and enforcement functions and by re-emphasizing the need to provide regulatory guidance and feedback to financial institutions as a way to facilitate compliance. The adoption of this approach brings BSA enforcement in alignment with today's corporate emphasis on risk-based business management in general. It also allows for the effective and efficient utilization of limited resources, which uses civil money penalties for those violations most egregious or otherwise meriting attention. Therefore, FinCEN's primary regulatory objective is to facilitate compliance with the BSA by the industries and financial institutions subject to its requirements – not to merely increase the number of civil money penalties by routinely assessing penalties for every violation.

FinCEN has worked aggressively and diligently since 1998 to process BSA potential enforcement matters more quickly, notwithstanding significant resource limitations. Since early 1999, FinCEN has processed 144 potential enforcement matters involving the industries it regulates, resulting in 17 civil money penalties (including 8 casino penalties) and 127 warning or cautionary letters in those matters where a penalty was not warranted. An additional 225 matters were processed and resolved with a determination that backfiling of CTRs was needed or by some other action. FinCEN

understands that assessing civil money penalties for serious willful violations of the BSA is an important component of assuring compliance; it is certainly not the only important component.

FinCEN's enforcement of the BSA is now more effective because (i) it expanded penalty assessments to cover additional BSA violations – casinos and other financial institutions have now been assessed penalties for record keeping and anti-money laundering program violations; (ii) it enhanced penalty assessment documents to discuss why the BSA violations were “willful” and posted the assessments on FinCEN's website thereby providing feedback and compliance guidance to all industries subject to the BSA; (iii) penalties are commensurate with the seriousness of the violation and size of the institution; (iv) the most egregious BSA violations are allocated the necessary resources to be processed *timely* for penalty assessment and the less serious violations are processed for warning or cautionary letters or other disposition; and (v) casino enforcement matters are processed in the same manner and under the same guidelines and procedures as the banking, MSBs and other financial institutions subject to the BSA, thereby treating casino cases *consistently*.

Moreover, it should be noted that casino matters are referred to FinCEN only after the IRS/Criminal Investigative Division (“IRS/CI”) has declined to investigate the matter criminally. Therefore, the most serious casino matters, the matters that raise the most serious BSA violations and money laundering concerns, are never referred to FinCEN at all.

**Response to Specific Audit Recommendations:**

**Finding 1: FinCEN Has Not Obtained and Reviewed Adequate Information From Its Regulatory Partners to Ensure Casinos are Complying with Regulatory Requirements**

FinCEN agrees that additional initiatives could improve its administration of the Bank Secrecy Act (BSA) as it applies to casinos, for example, better oversight and coordination with the Nevada Gaming Control Board. However, the audit report ignores improvements that FinCEN has made. FinCEN has worked diligently since 1999 to enhance its partnership with the IRS because it knew there needed to be improvements to the IRS Title 31 program for nonbank financial institutions, such as casinos. FinCEN also knew that introducing such sophisticated concepts as risk-based examinations and enforcement into the IRS program was a longer-term objective to achieve.

As early as the summer of 1999, FinCEN began to enhance communications and coordination with the IRS national program office responsible for administering Title 31 for casinos and other nonbank financial institutions – that office is now within the Small Business/Self-Employed (SB/SE) Division of the IRS. Among other things, FinCEN made presentations to highlight its new enforcement philosophy to field examiners in June and July 1999 and requested that IRS provide more information to FinCEN relating to the identification, education and examination of the institutions it oversees; this request

Appendix 2  
Management Comments

was made again in February 2000. Materials dated July 27, 1999 and February 3, 2000 were provided to the OIG reflecting these requests.

There are approximately 50 written communications to the IRS during 1999 through 2001, all sent by the Assistant Director, OCE, which provided information on FinCEN's enforcement philosophy and how cases were being processed. Such communications also included requests or recommendations that IRS take steps to update its Title 31 program, including for casinos. Enhancing FinCEN's relationship with the IRS was of such importance that a meeting among FinCEN's Director and Deputy Director and the IRS Commissioner and the Commissioner of SB/SE was held in October 2000, when each agency pledged to make enhanced efforts relative to the administration of the BSA.

These efforts have resulted in enhancements to the administration of the BSA not only for casinos, but also for money service business and other financial institutions that are the subject of IRS oversight. As reflected on pages 16 and 17 of the OIG Report – there is a new Anti-Money Laundering (AML) Program Manager within SB/SE overseeing the program; the AML program is currently being reorganized; and there is an agreement that the IRS will be changing the way it operates the Title 31 program. In fact, such efforts have resulted in an evolving and quickly changing program which is more specifically described, along with the initiatives being engaged in by the IRS and FinCEN to improve administration of the BSA, in the report dated April 24, 2002 submitted to Congress by Treasury (a Report to Congress in Accordance With §357 of the U.S.A. Patriot Act). FinCEN believes the §357 Report reflects the current – and therefore, more accurate – depiction of the relationship between FinCEN and the IRS that both agencies have been working hard to achieve over the last few years. Consequently, now that these program initiatives have yielded results, resources can be redirected to assess the program overseen by the Nevada Gaming Control Board.

**Recommendation 1:** FinCEN's Director should consider documenting FinCEN's and IRS's BSA responsibilities in a Memorandum of Agreement. The agreement should be a collaborative effort between FinCEN and the IRS. The agreement should ensure each agency's limited resources are utilized to provide effective administration of the BSA. The agreement should provide for a periodic review of IRS's compliance efforts to determine whether IRS's examination presence is adequate to provide reasonable assurance the casino industry is complying with the BSA. IRS should provide FinCEN with management reports on its casino examination selection rationale, and its casino compliance efforts.

**Response:** Concur with the intent of the recommendation with the following comments. FinCEN began efforts to achieve more collaboration with the IRS when the Assistant Director for the Office of Compliance and Enforcement was hired in December 1998. FinCEN will continue to pursue this goal to ensure reasonable compliance with the BSA by the casino industry. The report prepared for congress dated April 24, 2002 in Accordance with 357 of the U.S.A. Patriot Act reflects the current priorities and responsibilities of each organization. The effort that went into the developing this report aided in the correction of a number of areas surfaced by the audit report. Beginning in

the 1<sup>st</sup> quarter of FY 2003, FinCEN will assure that AML provides periodic reports outlining its examination efforts during the previous period, including a summary of the results of these examination efforts. [Target Completion: December 2002]

**Recommendation 2:** Ensure summary reports provided by Nevada's GCB are forwarded to appropriate FinCEN personnel. Periodically, review Nevada GCB reports to determine whether the GCB's oversight is adequate to provide reasonable assurance that Nevada casinos are complying with Regulation 6A requirements.

**Response:** Concur. During the audit, FinCEN requested the Nevada GCB to transmit these reports directly to FinCEN Enforcement. These reports are now incorporated into FinCEN's procedures and handled the same way that FinCEN handles similar reports submitted by the other agencies that refer cases to FinCEN. [Corrective Actions Completed.]

**Finding 2: FinCEN's Enforcement Actions Could be More Timely and Consistent**

Whether or not the IRS "agreed" with the new enforcement philosophy, FinCEN's enforcement counsel had opined that some of the cases presented for final review did not accurately interpret the applicable legal standard for bringing a civil penalty action for "willful" violations of the BSA. In light of this legal advice, FinCEN decided to reevaluate its enforcement cases. As the closing memoranda with each case makes clear, many of the casino cases were closed without penalty because the enforcement staff believed that the referral record developed by the IRS examinations did not show the facts necessary to legally assess civil money penalties without substantial litigation risk. After working closely with the IRS for over 2 years, FinCEN believes that casino referrals based on examinations completed more recently will contain the evidence necessary to support a civil money penalty for willful violations.

FinCEN provided information to the OIG that indicated the average time to process casino matters received after 12/98 was approximately 12 months - a significant improvement reflecting FinCEN's enhanced processing procedures. FinCEN's improvement in processing cases has been continuous since 1999 - even though the office had to work on a significant backlog of cases for all financial institutions, including casino cases, at the same time new cases were processed. For example, the audit report in Table 5 (p. 25) lists 20 cases, which illustrates that the average time to process the six cases received after January 1999 was 1.02 years as compared to 2.70 years for those cases received prior to 1999. FinCEN recently closed a casino case referred by the IRS with a processing time of 8 months. With the arrival of three new FTE's in FinCEN's enforcement function in late 2001, the average time to process a case will continue to improve.

By focusing on the processing of casino cases that were received by FinCEN before 1999, that is, before improvements were implemented under FinCEN's new enforcement philosophy, the audit report distorts FinCEN's accomplishments. The audit report also takes information provided to it out of context - never was there a "decision not to

implement management and oversight procedures” (OIG Report p. 21). In fact, there have been significant enhancements to management and oversight procedures implemented by FinCEN since early 1999. However, the ability to close the gap further on timely processing of enforcement matters and penalty cases was hampered by a number of personnel vacancies during this period.

As noted on page 21 and 22 of the report, FinCEN has also seen a substantial increase in the number of casinos who are voluntarily disclosing BSA violations to FinCEN, along with the significant efforts they are taking to correct such violations and to make improvements to their compliance programs so such violations do not occur in the future. Such casinos have told FinCEN they are taking this approach – including spending millions of additional dollars on BSA compliance – as a result of FinCEN’s new enforcement philosophy.

**Recommendation 1:** The Director of FinCEN should ensure OCE management oversight and timeliness procedures are followed.

**Response:** Concur. The statistics indicate that OCE management oversight and timeliness procedures have been followed since 1999, and cases received after that time have been processed quickly and effectively. The quarterly report provided to the Director provides statistics on the processing of enforcement matters, summarizes matters that were resolved, and highlights key issues related to cases being considered for monetary penalties. In addition, FinCEN’s annual performance report includes a performance measure that addresses the average processing time for civil penalty cases. The average processing time has significantly decreased from the FY 1997 baseline of 4.23 years to 1.8 years as reported in FY 2001. This performance measure was added to address the concerns outlined in GAO audit report number 98-108. [Corrective Actions Completed.]

**Recommendation 2:** The Director of FinCEN should work with IRS officials to reach an agreement on an acceptable enforcement strategy to ensure Treasury’s BSA compliance objectives are met.

**Response:** Concur. FinCEN and the IRS have been working together for the past two years on implementing an acceptable and legally supportable enforcement strategy. This effort has been an evolving process in light of IRS’s reorganization and renewed emphasis on its BSA responsibilities. The report prepared for congress dated April 24, 2002 in Accordance with 357 of the U.S.A. Patriot Act reflects the current priorities and responsibilities of each organization. The effort that went into the developing this report, along with the establishment of a National AML coordinator, has resolved the issues related to the enforcement strategy. [Corrective Actions Completed.]

**Recommendation 3:** Develop and implement updated civil case processing procedures, which are consistent with FinCEN’s enforcement program objectives. At a minimum, these procedures should provide IRS examiners and FinCEN analysts with objective

standards so they can determine whether referrals warrant civil penalties. Specifically, these procedures should define what is needed to meet the BSA's willfulness standard.

**Response:** Concur. FinCEN developed, updated and implemented civil case processing procedures beginning in 1999 and have been working with the IRS and the analysts since that time. FinCEN's enforcement group became fully staffed in late 2001. Each new employee has been fully trained in the processing procedures and provided a comprehensive procedural manual with numerous sample documents. FinCEN will also utilize the IRS's annual Title 31 Training Conference, held the week of August 12<sup>th</sup> to further address the procedures for developing a referral for enforcement matter or for civil monetary penalty consideration. This training conference brings together all IRS personnel working with the examination of MSB or Casino businesses related to Title 31 requirements. FinCEN will provide instruction on how to conduct a Title 31 examination, further outline its enforcement examination philosophy related to Title 31, and highlight the scope of IRS's new responsibilities related as outlined in the Patriot Act. [Corrective Actions Completed.]

**Recommendation 4:** Monitor the OCE to ensure it meets its short-term goals and priorities, with regards to processing casino civil case file referrals.

**Response:** Concur. OCE provided quarterly reports to FinCEN management prior to 1999. Beginning in 1999, in connection with the updated enforcement program, the Assistant Director OCE revamped the quarterly reporting procedures, which included additional statistics and information on enforcement and other regulatory matters. Beginning in January 2000, these interim reports were prepared and distributed to FinCEN management, OCE staff and Enforcement Counsel on a monthly basis. In addition, FinCEN's annual performance report includes a performance measure that addresses the average processing time for civil penalty cases. The average processing time has significantly decreased from the FY 1997 baseline of 4.23 years to 1.8 years as reported in FY 2001. [Corrective Actions Completed.]

**Finding 3: FinCEN Delayed Issuing Final Regulations for Casinos to File Suspicious Activity Reports Casinos (SARCs)**

**Recommendation 1:** The Director of FinCEN should place a priority on finalizing the proposed casino SARC regulations that FinCEN recently reissued.

**Response:** Concur. As the IG report indicates, on March 29, 2002, FinCEN published for additional comment, a rule that would extend suspicious activity reporting to the casino and card club industries. The comment period ended on May 28, 2002, and FinCEN received a total of fourteen comments. After considering these comments, FinCEN staff drafted a final SAR rule, which has been sent to the Treasury Department for clearance. The final rule will be effective six months after publication in the Federal Register. [Corrective Actions Completed.]

**Recommendation 2:** The Director of FinCEN should determine the circumstances under which FinCEN could obtain all SARCs filed by New Jersey casinos so it can populate its SAR database with all relevant SAR data and make this information available for law enforcement use.

**Response:** Concur. By September 30, 2002, FinCEN will send a written request to the New Jersey Division of Gaming Enforcement to determine whether and under what circumstances suspicious information reported to New Jersey under rules promulgated by that state could be shared and disseminated by FinCEN. This request will relate only to suspicious reports filed by New Jersey casinos before the federal rule becomes effective. Once the federal casino SAR rules become effective in 2003, the SARC information reported by casinos and card clubs located throughout the U.S. will be made available to law enforcement to the same extent as other Bank Secrecy Act data. [Target Date for Completion: December 2003.]

**Finding 4: FinCEN Needs to Improve Its Review and Analysis of Casino BSA Information.**

FinCEN's Pro-Active Targeting Section (PTS) currently identifies targets through a variety of methods. The targeting criteria that determines the method is not necessarily based on any one type of BSA document but on a number of variables such as national emergency (terrorism financing), current money laundering trends and patterns, or pro-active requests from law enforcement based on geographic area, suspect occupation, etc.

FinCEN does currently utilize casino BSA records in its pro-active targeting. In a true pro-active sense, FinCEN uses its targeting tools or other methods such as cross database matching to identify targets that satisfy a specified precondition or "rule." A precondition may be as simple as all SARs filed by financial institutions within a specified zip code or as complex as all CTRs filed on subjects that deposited over \$250,000 per month in a specified financial institution during a specified period of time. Preconditions may be determined not only through trends and patterns, or target analysis, but also by such factors as technological advances in targeting tools or previously unavailable data sources. In this type of targeting, all types of BSA records can satisfy the required precondition. Two current pro-active projects have involved both Suspicious Activity Reports for Casinos (SARCs) and Currency Transaction Reports for Casinos (CTRCs), when these records have caused a precondition to be satisfied. For example, one targeting project set as the precondition that a target be a suspect on both a SAR filing and a SARC filing. This resulted in the referral of five targets to law enforcement that satisfied this precondition. The majority of these targets also were of record on CTRC filings. The second project is similar, but with different initial datasets. At least one target was identified when the precondition was satisfied through SARC and CTRC filings. Finally, FinCEN procedures require that all targets, regardless of the method used to identify them, be queried against all other BSA records before they are referred to law enforcement for investigation.

**Recommendation 1:** Develop and implement procedures to ensure FinCEN's analytical databases contain current and historical BSA data.

**Response:** FinCEN has transitioned to a process of obtaining data downloads electronically from the IRS DCC. FinCEN will also complete its refresh of all CTRC records by the 1<sup>st</sup> quarter of FY 2003. It has also taken steps to improve the timeliness and accuracy of the data transmissions. The data is checked before being loaded into FinCEN's analytical database and again after the data is loaded to ensure the data load process is complete. Any discrepancies are corrected. Another check occurs periodically when total numbers of records are checked between the master copy of the database at IRS DCC and FinCEN's copy. Additionally FinCEN analysts report issues with the data, which are researched and corrected if necessary. FinCEN is confident that our new procedures will ensure that FinCEN's analysis is conducted on a complete set of records. [Target Completion Date: Dec 2002]

**Recommendation 2:** FinCEN should pro-actively review casino specific BSA data to identify potential money laundering and other financial crimes.

**Response:** Concur with qualifications. As addressed above, FinCEN continues to utilize casino specific BSA data to identify potential money laundering and other financial crimes. FinCEN agrees that until the requirement for mandatory Casino SAR reports is fully implemented there may be opportunities to make greater use of the Casino Currency Transaction Reports. FinCEN's ability to fully exploit these opportunities is currently constrained by available resources, including manpower and technology. FinCEN anticipates an increase in manpower and the operational use of new targeting software by 2<sup>nd</sup> quarter of FY 2003, however, the requirements for mandatory Casino SAR filing are expected to be promulgated during this period and the increase in Casino SAR filings may supplant the need to exploit Casino CTR filings. [Target Completion Date: January 2003].

**Northeastern Region**

Donald P. Benson, Regional Inspector General for Audit  
Dennis F. Deely, Audit Manager  
Kathleen T. Dunn, Auditor  
Allen S. Leftwich, Auditor

**The Department of the Treasury**

Under Secretary of the Treasury for Enforcement  
Office of Strategic Planning and Evaluations  
Office of Accounting and Internal Control

**Financial Crimes Enforcement Network**

Director  
Executive Assistant Director, Regulatory Policy  
Executive Assistant Director, Law Enforcement  
Assistant Director, Office of Compliance and Regulatory  
Enforcement

**Office of Management and Budget**

OIG Budget Examiner